

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

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RICO MENEFEE,

Plaintiff,

v.

Case No. 06-CV-12922-DT

J. PRAMSTALLER, et. al.,

Defendants.

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**OPINION AND ORDER DENYING PLAINTIFF'S APPLICATION  
TO PROCEED *IN FORMA PAUPERIS***

This matter is before the court on Plaintiff Rico Menefee's "Application for Prisoner to Proceed Without Prepayment of Fees or Costs." On July 31, 2006, the court issued an order summarily dismissing Plaintiff's *pro se* civil rights complaint and denying Plaintiff's request that he proceed *in forma pauperis* pursuant to 28 U.S.C. §1915(g). (07/31/06 Order.) Plaintiff has appealed that order and filed an application with this court to proceed on appeal *in forma pauperis*, which this court will deny.

Under 28 U.S.C. § 1915(a)(3), "[a]n appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith." See also Fed. R. App. P. 24(a). Good faith requires a showing that the issues raised are not frivolous; it does not require a showing of probable success on the merits. *Foster v. Ludwick*, 208 F. Supp. 2d 750, 765 (E.D. Mich. 2002).

The court finds that Plaintiff's claims are frivolous because they are procedurally barred pursuant to 28 U.S.C. § 1915(g). The PLRA precludes the filing of *in forma*

*pauperis* civil actions by a prisoner who has had three prior suits dismissed for being frivolous, malicious, or for failing to state a claim upon which relief can be granted, absent an allegation that the prisoner is in immediate danger of serious physical injury. 28 U.S.C. § 1915(g). As explained in the court's July 31, 2006 order, Plaintiff has filed three prior civil rights complaints that were dismissed as frivolous or for failure to state a claim upon which relief may be granted. See *Menefee v. U.P.S.*, No. 05-CV-74892 (E.D. Mich. Feb. 16, 2006) (Zatkoff, J.); *Menefee v. Wayne County Jail Food Dep't*, No. 01-CV-73884 (E.D. Mich. Sep. 10, 2002) (Friedman, J.); *Menefee v. Hall*, No. 01-CV-70924 (E.D. Mich. Mar. 26, 2001) (O'Meara, J.).

Under these circumstances, Plaintiff's complaint is subject to dismissal absent a showing that Plaintiff is "under imminent danger of serious physical injury." 28 U.S.C. § 1915(g). Because Plaintiff fails to allege that he is under imminent danger of future harm, his complaint was properly dismissed. See *Miller v. Menear*, 2003 WL 21462295 (6th Cir. 2003); *Wallace v. Amin*, 2003 WL 21456231 (6th Cir. 2003). As stated in the court's July 31, 2006 order, Plaintiff was free to "pursue the allegations contained in his complaint" by "submit[ting] payment of the \$350.00 filing fee within 30 days." (07/31/06 Order at 3.) Plaintiff has failed to do so. The court will deny Plaintiff leave to appeal *in forma pauperis* because any appeal in this matter would be frivolous. Accordingly,

IT IS ORDERED that Plaintiff's "Application for Prisoner to Proceed Without Prepayment of Fees or Costs" [Dkt. #5] is DENIED.

s/Robert H. Cleland  
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ROBERT H. CLELAND  
UNITED STATES DISTRICT JUDGE

Dated: September 14, 2006

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, September 14, 2006, by electronic and/or ordinary mail.

s/Lisa G. Wagner

Case Manager and Deputy Clerk  
(313) 234-5522